IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6445 of 1999

with

SPECIAL CIVIL APPLICATION No 6449 of 1999

with

SPECIAL CIVIL APPLICATION No 9491 of 1999

with

SPECIAL CIVIL APPLICATION No 9253 of 1999

with

SPECIAL CIVIL APPLICATION No 1301 of 2000

with

SPECIAL CIVIL APPLICATION No 13537 of 2000

with

SPECIAL CIVIL APPLICATION No 1664 to 1668 of 2001

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned : NO

Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals?

BARODA CITY GRANTABLE PVT PRIMARY SCHOOLS MANAGMENT ASSO

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6445 of 1999
   MR HJ NANAVATI for Petitioner No. 1
   MR BA VAISHNAV for Petitioner No. 1
   MR SHIRAZ GORI A.G.P. for Respondent No. 1-3
2. Special Civil Application No. 6449 of 1999
   MR HJ NANAVATI for Petitioner No. 1
   MR SHIRAZ GORI A.G.P. for Respondent No. 1-3
3. Special Civil Application No. 9491 of 1999
   MR BS PATEL for Petitioner No. 1-7
   MRS RANJAN B PATEL for Petitioner no.1-7
   MR SHIRAZ GORI A.G.P. for Respondent No. 1-2
4. Special Civil Application No. 9253 of 1999
   MR BS PATEL for Petitioner No. 1-9
   MRS RANJAN B PATEL for Petitioner no.1-9
   MR SHIRAZ GORI A.G.P. for Respondent No. 1-2
5. Special Civil Application No. 1301 of 1999
   MR PS PATEL for Petitioner No. 1-7
   MR SHIRAZ GORI A.G.P. for Respondent No. 1-2
6. Special Civil Application No. 13537 of 2000
   MR PS PATEL for Petitioner No. 1
   MR SHIRAZ GORI A.G.P. for Respondent No. 1-2
7. Special Civil Application No. 1664 to 1668 of 2001
   MR PS PATEL for Petitioner No. 1
   MR SHIRAZ GORI A.G.P. for Respondent No. 1-2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 06/03/2003

COMMON ORAL JUDGEMENT

1. All these petitions raise identical challenge against the Government Resolution dated 2nd June, 1999 in respect of the standard of fees to be charged from the primary school students from standard V to standard VII. With the consent of the learned advocates, all these petitions are disposed of by this common order.

2. The petitioners before this Court are the various school managements which run the Government aided primary schools from standard V to standard VII. Prior to the impugned Resolution dated 2nd June, 1999, the standard of

fees determined by the State was Rs.6/- per month in the school situated in rural areas and Rs.8/- per month in the school situated in urban areas. These standards were prevailing since the year, 1977. Since the year 1977, there have been periodical raise in the pay-scales of primary school teachers and there has been an increase in other expenditure also. Keeping in view the rising cost of education, the State Government has under the impugned Resolution dated 2nd June, 1999 raised the standard of minimum fees to be charged from the primary school students to that of Rs.30 in the rural areas and Rs.45/- in the urban areas.

3. The gravamen of the challenge is that the education for children under the age of 14 should be free. Instead, under the impugned Resolution the minimum fees determined by the State has been raised. There has been five-fold increase in the minimum fees to be charged from such students. The action of the State Government is violative of the directive principles enshrined in Article 45 of the Constitution of India and is contrary, to the observation made by the Hon'ble Supreme Court in the matter of State of H.P. v. H.P. State Recognised & Aided Schools Managing Committees & Ors. [1995 (4) S.C.C. 507] and in the matter of Mohini Jain v. State of Karnataka & Ors. [1992 (3) S.C.C. 666]. It is also submitted that the students who have been admitted to the schools run by the petitioners are from the lower strata of the Society. Their parents are unable to bear even the meagre fees of Rs.6/- every month. Most of the petitioner schools are situated in the rural areas where they do not charge any fees from the students. It is, therefore, not possible for the petitioners management to deposit a sum of Rs.30/- per student by way of fees received from the students. The standard of fees determined by the State Government is impracticable. The State Government has failed to take into consideration the relevant facts such as the capacity of the parents to pay fees even for primary education of their wards.

4. On the facts and in the circumstances of the case, I am of the view that the issue can be resolved by the State Government alone. No details of the expenditure incurred by the State Government in respect of the number of primary schools run by the State, number of primary schools run by the private management with the aid of the State and the extent of such aid given by the State to the number of primary school students in the State, are before this Court. In absence of any such relevant materials before the Court, the Court could not be in a position to decide the matter at issue.

5. In the circumstances, it is directed that all the petitioners herein shall, within three weeks from today, make representation to the State Government in the subject matter of these petitions. The State Government shall consider such representations that may be made hereafter and those which may be pending before the State Government and decide the same on or before 30th June, 2003 and the State Government shall make a speaking order. The petitioners shall be at liberty to challenge such decision, if adverse. The interim relief granted pending this petition, shall continue to operate till 15th July, 2003.

Subject to the above direction, the petitions are disposed of. Rule nisi issued in each of these petitions

The Registry shall maintain copy of this order in each of these petitions.

[Ms.R.M. Doshit, J.]

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